

### REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claims 1-52 have been cancelled. New claims 53-56 are added. New claim 53 corresponds to the combination of claims 22 and 23. In addition, new claim 53 recites that the *Aspergillus* mold fungus has "no detectable"  $\beta$ -fructofuranosidase activity. New claim 54 corresponds claim 25. New claims 55 and 56 correspond to non-elected claims 26 and 50. Rejoinder of claims 26 and 50 is respectfully requested upon allowance of claims 53 and 54.

Turning to the Official Action, the Examiner requested clarification of the Applicant's amendment regarding the status of the parent applications. The status of the parent applications has been amended to reflect that the parent application has issued as U.S. Patent No. 6,337,201, and to delete the reference that the international application is pending.

Regarding the Examiner's comments regarding the Information Disclosure Statement, all material references of which the Applicant is aware have been disclosed in the Applicant's IDS filed November 23, 2001.

In item 13 on page 1, the Examiner indicated that no priority documents have been received. This is incorrect. Certified copies have been filed and acknowledged by the Examiner on January 14, 2003.

Regarding the informalities in the specification which were objected to by the Examiner, these informalities are removed by the foregoing amendments.

Claims 22-25 were rejected under 35 USC 112, second paragraph, as being indefinite for the recitation "without  $\beta$ -fructofuranosidase activity". The Examiners interpretation is correct. What was intended by this recitation was that the *Aspergillus* mold fungus have no detectable activity. New claim 53 has been drafted to recite this preferred terminology. Support is found in the specification in Example C4, pages 36-37.

Accordingly, it is believed that this ground of rejection is overcome.

Claims 22 and 24 were rejected under 35 USC 112, first paragraph, for the reasons set forth on pages 4-8.

This ground of rejection is deemed to be overcome by the cancellation of these claims. Claim 25 was rejected under 35 USC 112, first paragraph, for the reasons set forth on pages 8-9.

A Deposit Declaration is submitted herewith in compliance with U.S. practice.

Accordingly, this ground of rejection is deemed to be overcome.

Lastly, claims 22 and 24 were rejected under 35 USC 102 as anticipated by Nakamura et al.

This ground of rejection is deemed to be overcome by cancellation of these claims.

The rejection of claims 22 and 24 set forth in the Official Action are not deemed to be applicable to new claims 53 and 54, since new claim 53 is based upon the combination of claim 22 and non-rejected claim 23.

The new claims are deemed to be in compliance with 35 USC 112, first paragraph. A skilled artisan would readily recognize from the teachings of the specification that the Applicant was in possession of the claimed invention, an *Aspergillus* mold fungus, based upon the described required property, i.e. having no detectable  $\beta$ -fructofuranosidase activity. The specification does fully enable one skilled in the art how to make and use the invention commensurate in scope with the claims. One skilled in the art would be readily capable of producing the claimed mold fungus having no detectable  $\beta$ -fructofuranosidase activity, using well known techniques in the art, and as described in detail in the specification.


Regarding the Nakamura et al. reference, the cited reference fails to disclose or suggest the claimed invention. The claimed mutant has no detectable  $\beta$ -fructofuranosidase activity. On the other hand, mutant 817 of the cited reference still has invertase activity, according to Table 1 on page 137 of the reference. The strain disclosed in the Nakamura reference is therefore different from the claimed invention. Thus, the rejection under 102(b) should not be applied to the new claims.

In view of the foregoing, it is believed that the new claims overcome each ground of rejection set forth in the Official Action.

Accordingly, it is believed that the application is now in condition for allowance, and such allowance is solicited.

Respectfully submitted,

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